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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 7 - 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendments to Section 1.773 of)
the Commission's Rules Regarding)
Pleading Cycle for Petitions)
Against Tariff Filings Made on)
14 Days' Notice)

CC Docket No. 92-117

ORIGINAL
FILE

REPLY COMMENTS

MCI Telecommunications Corporation (MCI) hereby provides its reply comments in response to the comments filed by several parties in response to the Commission's "Notice of Proposed Rulemaking" (NPRM), released June 1, 1992, in the afore-captioned proceeding.^{1/} In this proceeding, the Commission is proposing to reduce, by one day, the deadline for protesting 14-day tariff filings and, by several days, the deadline for carrier replies to filed protests.^{2/} Additionally, the Commission is proposing that both tariff protests and carrier replies be "personally served," thereby removing as a factor the U.S. Postal Service.

In its initial comments, MCI indicated that it did not oppose the proposed rule modifications, even though it stood to be adversely affected by new constraints that would apply to its protests of other carriers' 14-day filings and to its defense of its own challenged tariffs. Further, MCI supported the Commission's proposal that personal service of both initial

^{1/} FCC 92-215.

^{2/} The proposal is to reduce from four to three calendar days the deadline for replies. This could be more than a one day reduction because, under the current rule, intermediate "holidays," e.g., Saturdays and Sundays, are not counted.

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tariff protests and carrier replies, if required, be permitted to be achieved by facsimile, with subsequent mailings to affected parties. MCI noted that this would be an efficient way to realize same-day service, and it proposed additional rule changes to accommodate personal service via facsimile.

Generally, those filing initial comments support the Commission's proposed rule modifications, in clear recognition of the fact that the current rules are unworkable because pleading cycles can extend beyond the 14-day deadline for Commission action on proposed tariffs. Some, however, suggest additional modifications because they believe that the proposed protest and reply periods are unreasonable.^{3/} MCI will not address their positions; instead, it will respond to positions that it believes are incorrect as a matter of law or policy and, therefore, should not be adopted by the Commission.

Southwestern Bell Telephone Company (at 3), US WEST Communications (at 4-5) and BellSouth Telecommunications (at 7) urge the Commission to abandon the requirement that carriers personally serve their replies on tariff protesters on the premise that, as there is no opportunity for protesters to respond to carrier replies in tariff proceedings, there is no urgency that requires personal service. Although it is true that the rules do not provide for a "surreply" opportunity, protesting

^{3/} Several carriers, for example, point out that, under the new proposed rule, they could be required to respond to protests against their tariffs in a single business day, which they claim is unfair and unrealistic. See, e.g., Bell Atlantic at 2.

parties nevertheless should have an opportunity to respond, if only informally, to any replies that are non-responsive, illogical, unsupported or otherwise outrageous. As tariff proceedings are not subject to ex parte rule requirements, every opportunity should be available to tariff challengers (and Commission staff, as well) to air controversies arising from proposed tariffs before they become effective. If replies are not required to be personally served, such potential additional dialogue will be lost.

The American Telephone and Telegraph Company (AT&T) characterizes competitor challenges to its legally questionable tariff proposals as "routine" and "meritless on their face" (at 2, n. 3). It accordingly suggests that "the filing carrier need not reply to such petitions, and the Commission need not expend the resources to deny the petitions..." with a view toward "simply" allowing the tariff "to go into effect as scheduled." There is nothing that requires AT&T to respond to tariff protests, as the rule confers a right, not a duty, to reply. If AT&T is confident that it need not respond to protests lodged against its tariffs in order to prevail in tariff proceedings, then it need not file a reply. That is its choice to make and, presumably, it understands fully the ramifications of foregoing its reply opportunity. The Commission, on the other hand, has a clear-cut obligation under the Administrative Procedures Act (APA) to provide a rationale for the decisions it makes, including allowing challenged tariffs to take effect. It must,

therefore, issue decisions with respect to challenged tariffs and, as MCI stated in its initial comments (at 2, n. 4), it is hoped that the Commission will use the additional time it acquires via the rules it adopts to fashion orders that satisfy its obligations under the APA.

Some parties express concern over the use of facsimile as a reliable delivery medium, suggesting that notice problems might arise as a result of incomplete or illegible faxes, faxes sent to the wrong parties at incorrect telephone numbers, or faxes sent at the wrong time. These are not insurmountable difficulties, however, and should not be allowed to defeat the adoption of rule modifications that allow for the use of this important and efficient telecommunications medium. To allay concerns in this area, MCI would not oppose an additional rule modification to the effect that fax-senders place follow-up telephone calls to ensure that their faxes are received, or that fax recipients acknowledge by telephone their receipt of faxes.^{4/}

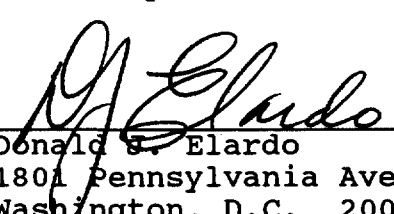
Finally, the Interexchange Resellers Association suggests that carriers be required to personally serve, by facsimile, tariff transmittal pages "to interested parties" and, further, "to fax the entire contents of the transmittal within two business hours of a telephonic or fax request from interested parties." (at 1) This position is patently absurd. First,

^{4/} In this regard, Pacific Bell and Nevada Bell (at 3) offers no compelling reasons in support of its position to foreclose personal service via facsimile.

there is an initial question as to which "parties" are "interested." Logic says that all a carrier's existing and potential customers are "interested" in tariff filings that would affect in any way the services they receive, or contemplate receiving. Does this then translate into a requirement that a carrier should be obligated to send its transmittal letter to an entire universe of users? The cost and administrative burden on carriers would be overwhelming^{5/} and, it should be noted, the proponent of this approach offers no payment for the personalized service it is seeking. Tariff filings are, as they always have been, constructive notice to the public of binding changes upon customers, and this long-established legal fact should not be altered by the Association's proposal. Finally, there are commercial enterprises which perform the service sought by the Association; and no reason is offered as to why the Association could not obtain the tariff service it seeks from those entities.

The Commission respectfully is requested to take these comments into account when it considers adoption of the subject rule modifications.

By: _____


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Dated: August 7, 1992

^{5/} The Association wants to receive not one but two fax transmittals in order to ensure that it receives actual notice of tariff proposals.

CERTIFICATE OF SERVICE

I, Karen E. Dove, hereby certify that MCI Telecommunications Corporation's "REPLY COMMENTS" in Case No. 92-117 have been served this 7th day of August, 1992, by first-class mail, postage prepaid, unless otherwise noted, to the persons listed below.

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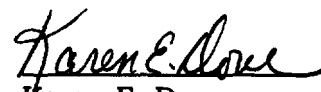
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